

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-241
DARRELL BRYAN)	File No. BPH-920109MA
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
For Construction Permit for)	
New FM Channel 276A)	
Tusculum, Tennessee)	

To: Honorable John M. Frysiak
Administrative Law Judge

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NOTIFICATION OF WITNESSES DESIRED FOR CROSSEXAMINATION

SBH Properties, Inc. ("SBH") by counsel herewith submits its notification of witnesses desired for cross-examination at the hearing in this proceeding, which is scheduled to commence on March 1, 1994, and requests that Darrell Bryan ("Bryan") be made available as a witness for the following reasons:

1. Darrell Bryan's direct testimony indicates (Exhibit 4) that he "owns 100% of the common voting stock of Burley Broadcasters, Inc., licensee of Radio Station WSMG-AM, Greeneville, Tennessee" and that, in the event his application is granted, he "intends to divest of this ownership interest and to sever all of his ties and connections with both the radio station and Burley Broadcasters, Inc."

2. Mr. Bryan's cross-examination testimony is necessary to determine his intentions regarding his proposal to divest his

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interest in WSMG(AM) and how he will go about divesting his "ownership interest" and severing "all of his ties and connections with both the radio station and Burley Broadcasters, Inc," especially in the event that the station could not be sold for more than sufficient funds to retire the outstanding debt on the station, debt which may well exceed the value of the station assets, all of which are pledged as security against the outstanding debt.

3. Mr. Bryan's testimony is also needed to develop evidence on the record regarding the circumstances relating to his divestiture proposal, in light of his deposition testimony that: Burley Broadcasters, Inc. is indebted to the Greene County Bank on the basis of a Promissory Note, having a principal value of \$ 300,000.00, of which amount more than \$ 200,000.00 remains, outstanding; the indebtedness to the Greene County Bank is secured by both a pledge of the stock of Burley Broadcasters, Inc. and a security interest in all the station's physical assets, as well as the personal guaranty of Bryan and his wife; both WSMG's studio and transmitter sites are leased; Bryan hopes to transfer the goodwill he has generated at WSMG to the new FM; Bryan has had no discussions with the Greene County Bank regarding the sale of WSMG(AM) and, thus, has received no indication from the Bank that it would permit the station to be sold for a sum less than sufficient to retire the outstanding debt; that Bryan's belief that the station would sell for an amount equal or greater than the outstanding indebtedness is

based solely upon his personal opinion, having obtained no appraisal of the station and having received no offers to purchase the station at any price, much less for a sum sufficient to retire the outstanding debt and that, prior to his deposition, Bryan had not thought through what he would do in the event he could not sell WSMG for sufficient funds to pay off the outstanding indebtedness. Taken together, these circumstances undermine Bryan's ability to effecutate his proposal.

4. Likewise, Bryan's cross-examination testimony is needed to establish how he arrived at the hourly figures advanced in support of the amount of time claimed to have been devoted to his various civic activities. 1/ 2/ His testimony is also needed to develop evidence regarding the involvement of WSMG in the Chamber of Commerce related activities for which Bryan seeks credit, especially with regard to the Greene County Fall Fest, given Bryan's testimony that WSMG was heavily involved in that

1. SBH has filed a Request for Ruling, seeking a ruling precluding Bryan from receiving any credit for his participation in civic activities, given his failure to produce even a single document relating to those activities in violation of the Commission's Rules and an Order of the Presiding Judge. If that Request is granted, the need for cross-examination regarding Bryan's civic participation will be unnecessary.

2. The referenced hourly figures are among those elements which have been added to Bryan's direct testimony, which were omitted from his Integration and Diversification Statement. SBH will object to the admission of all such added elements, as an attempt to improve Bryan's comparative showing over what he claimed in his Application and Integration Statement. If SBH's objections to the admission of such added elements are granted, the need for cross-examination in this area would be unnecessary.

event and that it was WSMG, not himself personally, that was a member of the Chamber. Given Bryan's deposition testimony that WSMG was involved in the promotion of membership drives for the YMCA, cross-examination is needed to establish the extent to which Bryan's claimed activities were in fact activities of the radio station. His testimony is also needed to establish that he did not personally raise \$ 50,000.00 for the March of Dimes, a fact he admitted at his deposition.

5. Finally, SBH is prepared to confer with counsel for Bryan to determine whether these matters may be addressed by means of stipulation and/or through the admission of portions of Bryan's deposition testimony and other documentary evidence into the record in lieu of requiring his live testimony. However, absent a mutually agreeable arrangement, good cause for requiring Bryan's testimony has been demonstrated, given SBH's identification of "material issues of decisional fact" which "cannot be resolved without" his testimony. See: Section 1.248.

Respectfully Submitted

SBH PROPERTIES, INC.

By: 

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February 14, 1993

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 14th day of February, 1994, served a copy of the foregoing Notification of Witnesses Desired for Crossexamination by First Class mail, postage prepaid (except as noted) upon the following:

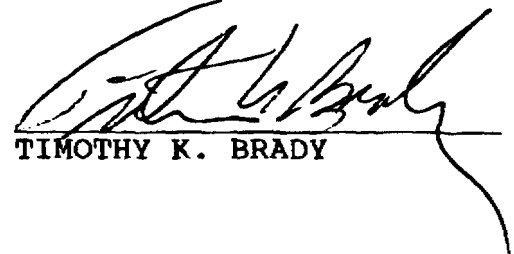
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TIMOTHY K. BRADY